

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

HAROLD PERSAUD,) JUDGE DONALD C. NUGENT
)
Petitioner,) CRIMINAL CASE NO. 1:14 CR-00276
)
vs.)
) CIVIL CASE NO.
UNITED STATES OF AMERICA)
)
Respondent.)

MOTION TO VACATE AND SET ASIDE JUDGMENT OF CONVICTION
AND SENTENCE UNDER 28 U.S.C. §2255

1. (a) Name and location of court which entered the judgment of conviction you are challenging: United States District Court for the Northern District of Ohio
(b) Criminal docket or case number: 1:14 CR-00276
2. (a) Date of judgment of conviction: January 5, 2016
(b) Date of sentencing: December 18, 2015
3. Length of sentence: 20 years
4. Nature of crime (all counts): Health Care Fraud (Count 1); False Statement Relating to Health Care Matters (Counts 2-5); False Statement Relating to Health Care Matters (Counts 7-15); Engaging in Monetary Transactions in Property Derived from Criminal Activity (Count 16)
5. What was your plea? Not guilty Guilty Nolo contendere
6. If you went to trial, what kind of trial did you have? Jury Judge
7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No
8. Did you appeal from the judgement of conviction? Yes No
9. If you did appeal, answer the following:
 - (a) Name of court: United States Court of Appeals for the Sixth Circuit
 - (b) Docket or case numbers: 16-3105; 16-3427; and 16-3578

(c) Result: Judgment Affirmed

(d) Date of Result: June 13, 2017

(e) Citation to the case: United States v. Persaud, 866 F.3d 371 (6th Cir. 2017)

(f) Ground raised: Sufficiency of the Evidence

(g) Did you file a petition for certiorari in the U.S. Supreme Court? Yes No

(1) Docket or case number:

(2) Result:

(3) Date of result:

(4) Citation to the case:

(5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes No

11. N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. State the facts supporting each ground.

GROUND ONE:

**UNTESTED, UNQUALIFIED “EXPERT” TESTIMONY AND
IMPERMISSIBLE OPINION TESTIMONY WAS ADMITTED AT TRIAL
THROUGH INDIVIDUALS IDENTIFIED BY THE GOVERNMENT AS
“EXPERT” WITNESSES, AND INDIVIDUALS IDENTIFIED AS “LAY”
WITNESSES, AS THE RESULT OF COUNSEL’S INEFFECTIVE
ASSISTANCE**

- A. Under the Strickland Standard Counsel were Deficient
- B. Trial and Appellate Counsel were Ineffective in Failing to Challenge the Government’s “Expert” Witnesses and Their Proposed Testimony as Required Under the Federal Rules of Evidence and Daubert v. Merrill
Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)

C. Trial and Appellate Counsel were Ineffective in Failing to Challenge the Government's "Lay" Witnesses Who Clearly Gave Expert Testimony and Impermissible Opinion Testimony at Trial

(a) Supporting facts: See Attached Memorandum in Support

(b) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

GROUND TWO:

COUNSEL WERE INEFFECTIVE FOR FAILING TO PROPERLY OBJECT TO "AMOUNT OF LOSS" CALCULATIONS, AND FOR FAILING TO RAISE ON APPEAL THAT "AMOUNT OF LOSS" CLAIMED BY THE GOVERNMENT AND ITS EXPERTS WAS BASED UPON ERRONEOUS FACTS AND WAS IMPROPERLY CALCULATED, RENDERING DR. PERSAUD'S RESULTING SENTENCE INSUPPORTABLE, UNCONSTITUTIONAL, AND ILLEGAL.

(a) Supporting facts: See Attachment Memorandum in Support

(b) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

13. Is there any ground in this motion that you have not previously presented in some federal court? Yes No

14. Do you have any motion, petition, or appeal now pending in any court for the judgment you are challenging? Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the case for the judgment you are challenging:

(a) At the arraignment and plea: Henry Hilow, Esq.

William T. McGinty, Esq.
McGinty, Hilow & Spellacy Co., LPA
614 West Superior Avenue, Suite 1300
Cleveland, Ohio 44113

(b) At the trial:

Henry Hilow, Esq.
William T. McGinty, Esq.
McGinty, Hilow & Spellacy Co., LPA
614 West Superior Avenue, Suite 1300
Cleveland, Ohio 44113

(c) At sentencing:

Henry Hilow, Esq.
William T. McGinty, Esq.
McGinty, Hilow & Spellacy Co., LPA
614 West Superior Avenue, Suite 1300
Cleveland, Ohio 44113

(d) On appeal:

Subodh Chandra, Esq.
Donald Screen, Esq.
Sandhya Gupta, Esq.
The Chandra Law Firm, LLC
1265 W. 6th Street, Suite 400
Cleveland, Ohio 44113

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court at the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion: N/A

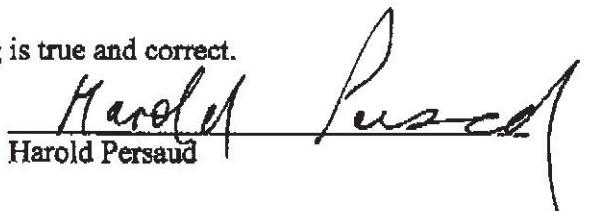
Therefore, Mr. Persaud requests that the Court vacate and set aside the judgment of conviction and Sentence on Counts 1,2,3,4,5,7,8,9,10,11,12,13,14,15, and 16, and grant any other relief to which may be entitled.

Respectfully submitted,


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Counsel for Petitioner Harold Persaud

I declare under penalty of perjury that the foregoing is true and correct.

Signed on 6/7/18


Harold Persaud